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and Other Cruel, Inhuman
or Degrading Treatment
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MEETING OF THE STATES PARTIES TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Fifth Meeting

SUMMARY RECORD OF THE 7th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 29 November 1995, at 10.30 a.m.

Temporary Chairman: Mr. AYALA LASSO (High Commissioner for Human Rights)

Chairman: Mr. SEUNG HO (Republic of Korea)

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The meeting was called to order at 10.50 a.m.

OPENING OF THE MEETING BY THE REPRESENTATIVE OF THE SECRETARY-GENERAL OF THE UNITED NATIONS (item 1 of the provisional agenda)

1. The TEMPORARY CHAIRMAN said that since the Fourth Meeting of the States parties on 24 November 1993 the number of States which had ratified or acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had risen from 79 to 91. That increase was a source of satisfaction since it reflected the international community's continuing interest in attaining the objectives of the Convention. It was a particular pleasure to welcome the representatives of new States parties participating in the Meeting for the first time.

2. The Committee against Torture had been established by States parties in November 1987, in accordance with article 17 of the Convention, and to date had held 15 sessions. In the four sessions since the last Meeting of the States parties, the Committee had considered the reports of 21 States. Reports had been requested from 138 States and 81 had been submitted.

3. The Committee had continued its confidential inquiries under article 20 of the Convention and had considered 30 individual communications submitted in accordance with article 22. Generally speaking, its activities linked to confidential procedures had increased considerably over the past three years. It was primarily for that reason that, in its most recent annual report to the General Assembly, the Committee had expressed the opinion that an additional ordinary session of one week per year would be necessary in view of the complexity of its task and the tempo of its work.

4. In addition, the Committee had continued its efforts to strengthen cooperation and coordination with the Special Rapporteur on torture appointed by the Commission on Human Rights, with the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture and with the European Committee for the Prevention of Torture. It had also discussed various issues, including how to improve its methods of work, as a result of which it had amended some of its rules of procedure. It had taken a decision on the draft optional protocol relating to the Convention, which was currently being considered by a working group.

5. The main task of the current Meeting of the States parties was to elect five members of the Committee against Torture to replace those whose terms of office would expire on 31 December 1995. In a note verbale dated 30 June 1995 the Secretary-General had invited the States parties to nominate candidates for election by 30 September 1995. A list of candidates, indicating the States parties nominating them, was contained in document CAT/SP/18 and Add. 1 and 2. The latter document stated that Panama had decided to withdraw its candidate from the election. The names of the five Committee members whose terms of office expired on 31 December 1995 and of the five remaining members who would continue to serve until 31 December 1997 were given in annexes I and II of document CAT/SP/18. Biographical data on the candidates provided by the States parties concerned were contained in annex III.

6. On the financing of the activities envisaged under the Convention, in 1992 the Government of Australia had proposed amendments to the Convention whereby activities undertaken in the context of the Convention would be financed from the United Nations regular budget. A conference of States parties, convened by the Secretary-General in New York on 9 September 1992, had adopted those amendments, which had subsequently been approved by the General Assembly in resolution 47/111. In accordance with that resolution, since 1 January 1994 the activities of the Committee against Torture, as well as the biennial Meetings of the States parties, had been financed from the United Nations regular budget. The amendments would come into force after they had been accepted by two thirds of the States which had been parties to the Convention at the time when the amendments had been adopted, i.e. 45 States out of a total of 68. To date, only 17 States parties had notified their approval of the amendments to the Secretary-General.

7. Mr. GONZALES DE LINARES (Spain), speaking on behalf of the European Union, said that the European Union had stated its position on the participation of the Federal Republic of Yugoslavia (Serbia and Montenegro) in many United Nations forums. As had been made clear on several occasions, the European Union considered that the decisions adopted by the Fifth Meeting of the States Parties to the Convention against Torture would be without prejudice to the legal consequences deriving from the fact that the Socialist Federal Republic of Yugoslavia had ceased to exist. It wished to reiterate that its well-known position on the question of succession had not changed.

8. Mr. BENJELLOUN-TOUIMI (Morocco) said that all delegates were undoubtedly aware of the various arguments adduced in the United Nations regarding the participation of the Federal Republic of Yugoslavia in its meetings. Indeed, United Nations resolutions existed on the subject. In accordance with the relevant decisions by the Security Council and the General Assembly, the presence of the Federal Republic of Yugoslavia at the current Meeting was not justified. That was also the case since the Socialist Federal Republic of Yugoslavia no longer existed. To date, the State which claimed to replace it had not applied for membership of the United Nations. For that reason, either the delegation present should withdraw or a vote should be taken on a motion that it should withdraw. It was necessary to take account of recent developments such as the Dayton peace agreement. He was making the present statement on behalf of all members of the Organization of the Islamic Conference as well as his own delegation.

9. Mr. WILLE (Norway) associated himself with the statement made by the representative of Spain on behalf of the European Union. The decisions adopted by the Meeting should be without prejudice to the legal consequences deriving from the fact that the Socialist Federal Republic of Yugoslavia had ceased to exist.

10. Mr. McALISTER (Canada) also associated himself with the statement made by the representative of Spain on behalf of the European Union.

11. Mr. PAVICEVIC (Federal Republic of Yugoslavia (Serbia and Montenegro)) expressed surprise at the fact that the question of his delegation's participation in the Meeting had been raised. As a State party to the Convention against Torture, his delegation strongly objected to the attempts

made to challenge its participation. As already explained in the aide-mémoire distributed to all States parties, any action in connection with Yugoslavia's participation in the Meeting would be unfounded and inconsistent with the letter and spirit of the Convention and the rules of procedure of the Meeting. Those States parties initiating and supporting such action would be solely responsible for it.

12. Various arguments had been put forward by delegations in an attempt to invoke General Assembly resolution 47/1 and the issues of succession to, and continuity of, the former Socialist Federal Republic of Yugoslavia as a pretext for their action. However, such arguments were unwarranted and wrongly construed. For the sake of clarity it was necessary to state briefly some of the reasons in support of his delegation's position.

13. First, the Socialist Federal Republic of Yugoslavia had become a State party to the Convention against Torture on 10 September 1991. Secondly, in the Declaration of the Assembly of the Federal Republic of Yugoslavia dated 27 April 1992, it had been clearly stated that the Federal Republic of Yugoslavia would continue the State, international, legal and political personality of the former Socialist Federal Republic of Yugoslavia and that it undertook to honour all the international obligations of the former Socialist Federal Republic of Yugoslavia, including those arising from international instruments on human rights. Thirdly, that position was unequivocally supported by the rules of international customary law which were codified in the 1978 Vienna Convention on Succession of States in respect of Treaties (arts. 34 and 35). Fourthly, the status of the Federal Republic of Yugoslavia as a party to treaties was in no way affected by General Assembly resolution 47/1, which pertained solely to non-participation in the General Assembly. According to the opinion of the United Nations Legal Counsel contained in document A/47/485, "The resolution does not take away the right of Yugoslavia to participate in the work of organs other than Assembly bodies." According to another opinion of the United Nations Office of Legal Affairs dated 16 November 1993, "The status of Yugoslavia as a party to the treaties is not affected by the adoption of General Assembly resolution 47/1". Fifthly, his delegation had been officially invited to the Meeting, for which purpose it had duly submitted full powers. Sixthly, the Meeting was not an appropriate forum for the discussion of either issues arising from the succession of the former Socialist Federal Republic of Yugoslavia or the status of the Federal Republic of Yugoslavia in the United Nations. Those issues were under consideration within the International Conference on the Former Yugoslavia and in the United Nations. Seventhly, the Federal Republic of Yugoslavia had clearly expressed its readiness and resolved to honour all its duties and obligations arising from the Convention against Torture. Eighthly, therefore, the least that could be expected of the Federal Republic of Yugoslavia, as a State party to the Convention, was to participate in the Meetings of the States parties.

14. On the strength of the above arguments, his delegation was fully convinced that the action to suspend its participation in the Meeting was politically motivated and designed to satisfy the one-sided and myopic interests of certain States. Such legally unfounded action might set a dangerous precedent with respect to the status of the States parties to the Convention and create serious obstacles to its implementation. It should be

understood that the denial of the legitimate right of the Federal Republic of Yugoslavia to participate in the Meeting would at the same time imply that the very delegations of States parties which had initiated and supported that action were in fact suspending Yugoslavia's obligations arising from the Convention. Such moves would result in the suspension of the activities and cooperation of the Federal Republic of Yugoslavia with the Committee against Torture. Moreover, the Committee would not be in a position to request the Federal Republic of Yugoslavia to undertake any activity under the Convention.

15. The Convention belonged to a special category of treaties whose beneficiaries were not States but individual human beings. That was exactly the reason why the International Court of Justice, in the so-called Barcelona Traction case, had ruled that the international human rights instruments were valid erga omnes and should be accorded privileged status.

16. His delegation was not requesting anything beyond its status as a State party to the Convention, i.e. it wished to continue to honour its commitments under the Convention in order to ensure that human beings were protected against all forms of human rights violations. A decision to suspend participation would imply that United Nations efforts aimed at universal ratification of international instruments in the field of human rights were in jeopardy. In that connection, it should be recalled that a delegation of the Federal Republic of Yugoslavia had taken part in the work of the Fourth Meeting of the States Parties in November 1993.

17. Consequently, his delegation strongly opposed any kind of pressure or imposition of rule of the majority by any group of States. To accept such an approach, inspired by purely political motives, would be disastrous both for the cooperation of States parties and for the future implementation of the Convention. Such a decision would run the risk of being completely incompatible with current developments emerging within the peace process in the territory of the former Yugoslavia and with the spirit of the agreement reached recently in Dayton. It would also send the wrong message to the forthcoming meetings in Paris and London. In the event of a vote on a motion to suspend its participation, his delegation would request a roll-call.

18. Ms. RADJO (Bosnia and Herzegovina) said that her delegation fully supported the statement made by the delegation of Morocco. The delegation of the so-called Federal Republic of Yugoslavia should withdraw from the Meeting or a vote on the matter should be taken.

19. Mr. MADEY (Croatia) said that the position of his delegation on succession to the former Socialist Federal Republic of Yugoslavia had always been and remained consistent with the decisions which had enjoyed the widest support of the international community. The opinions of the Badinter Arbitration Commission, Security Council resolution 777 (1992) and General Assembly resolution 47/1 had all unequivocally stated that the process of dissolution of the Socialist Federal Republic of Yugoslavia had been completed, that the Socialist Federal Republic of Yugoslavia no longer existed, and that none of the successor States could solely and automatically claim the rights to membership of international organizations previously enjoyed by the former Socialist Federal Republic of Yugoslavia.

20. The above resolutions stipulated that the Federal Republic of Yugoslavia (Serbia and Montenegro) should be considered as a new State which could not claim to be the sole and automatic successor to the former Socialist Federal Republic of Yugoslavia and which should apply for membership of the United Nations and other international organizations and become a State party to international conventions by respecting the established norms of international law, as had been the case with the Republic of Croatia and all other successor States of the former Socialist Federal Republic of Yugoslavia.

21. Therefore, as stated by the representative of the European Union, Croatia wished to reiterate that the presence of the delegation of the Federal Republic of Yugoslavia (Serbia and Montenegro) at the Meeting of States Parties to the Convention against Torture in no way contradicted the above-mentioned position of principle, nor did it set a precedent for the resolution of the status of that State in the United Nations system and other international organizations, and vis-à-vis international legal instruments.

22. Mr. ULUCEVIK (Turkey) said that his delegation wished to associate itself with the statement made by the delegation of Morocco.

23. Mr. MALGUINOV (Russian Federation) said that given the value of human rights instruments, it was extremely important to respect the continuous and inviolable nature of obligations arising from them. It was necessary to distinguish between the participation of a sovereign State in international treaties and its participation in the work of international organizations. Particular stress should be laid on participation in international human rights treaties. It was contrary to treaty law to object to the position of a State party and, in that connection, to the position of the Committee against Torture, which recognized Yugoslavia as a fully fledged party to the Convention. The resolution relating to States participation in human rights treaties adopted by consensus at the two most recent sessions of the Commission on Human Rights should be taken into account. The main characteristics of that resolution were the obligations stemming from such treaties, which should not be evaded for any reason whatsoever. The participation of the Federal Republic of Yugoslavia in the current Meeting was fully justified, in line with its participation in the Fourth Meeting of the States Parties. His delegation opposed the proposal made by the representative of Morocco.

24. Mr. LOFTIS (United States of America) welcomed the recent progress made at the Dayton peace talks. However, it had been made clear on numerous occasions that the Socialist Federal Republic of Yugoslavia no longer existed. The United States did not consider Serbia and Montenegro to be the continuation of, or sole successor to, the Socialist Federal Republic of Yugoslavia. Serbia and Montenegro should therefore not be entitled to assume the seat of the former Socialist Federal Republic of Yugoslavia or otherwise participate in international organizations and conferences, including the Meeting currently in progress.

25. Mr. ZAHRAN (Egypt) associated himself with the statement made by the representative of Morocco on behalf of the Islamic group of States and with that made by the representative of the United States. The Socialist Federal Republic of Yugoslavia no longer existed, and the new State of the Federal

Republic of Yugoslavia (Serbia and Montenegro) was not its automatic successor. Either the representative of the Federal Republic of Yugoslavia (Serbia and Montenegro) should withdraw or a vote should be taken on the matter, as the presence of the representative of that State was not justified.

26. Mr. GONZALES DE LINARES (Spain) requested clarification by the secretariat and the legal adviser on a point relating to resolutions adopted by United Nations bodies. While those resolutions applied to international bodies and agencies, he wondered what the legal position was with regard to their application to a Meeting of the States parties to an international instrument.

27. Mr. BENJELLOUN-TOUIMI (Morocco), replying to the representative of Spain, said that whenever a similar case had arisen in the past there had been a choice between two options. The first option was for the delegation concerned to withdraw, and in his opinion that was the best solution. The second option was for the Meeting to take a vote on the question. He would welcome any further explanation by the secretariat.

28. The TEMPORARY CHAIRMAN observed that three different positions had emerged during the course of the discussion. The first comprised a request that the representatives of the Federal Republic of Yugoslavia (Serbia and Montenegro) should withdraw and not participate in the work of the Meeting, or that a vote be taken on a motion that they should not participate. The second position would permit the participation of that State in the Meeting. The third position was that the presence of that delegation should not affect the decisions of the Meeting. In view of that situation, it might be advisable to suspend the meeting, as had been suggested by a number of delegations, in order to try to resolve the question without delay.

The meeting was suspended at 11.30 a.m. and resumed at 12.15 p.m.

29. The TEMPORARY CHAIRMAN expressed the hope that the consultations had resulted in positive conclusions. He invited comments from delegations.

30. Mr. BENJELLOUN-TOUIMI (Morocco), referring to the earlier inquiry about possible precedents, said a number of delegations had reminded him that a similar situation had occurred at the Meeting of the States Parties to the International Covenant on Civil and Political Rights held in New York in March-April 1994. He suggested that the same procedure should be adhered to as on that occasion: the Meeting had decided that the Federal Republic of Yugoslavia (Serbia and Montenegro) should not participate in the deliberations of the Meeting and that it should withdraw from the conference room. He formally made that proposal, but it would be less disruptive if the delegation of the Federal Republic of Yugoslavia (Serbia and Montenegro) decided to withdraw of its own accord. If it did not, he would propose the motion that that State should not participate in the Meeting.

31. Mr. PAVICEVIC (Federal Republic of Yugoslavia (Serbia and Montenegro)) stated that his delegation maintained its previous position. It would not comply with the proposal by the representative of Morocco. In the event of a vote being taken, his delegation would request that it should be by roll-call.

32. Mr. NGOUBEYOU (Cameroon) suggested that if the Meeting decided to take a vote, the vote should be by secret ballot.

33. The TEMPORARY CHAIRMAN said that the Federal Republic of Yugoslavia (Serbia and Montenegro) had requested an open roll-call vote and not a secret ballot.

34. Mr. MALGUINOV (Russian Federation), speaking in explanation of vote before the vote, considered that the Meeting was not empowered to define the States parties to the Convention; only the depositary was thus empowered. The depositary had informed States parties that the Federal Republic of Yugoslavia (Serbia and Montenegro) was a State party to the Convention.

35. On a second point, in the rules of procedure of the Meeting there was no mention of the fact that the Meeting could determine its own membership or that it could adopt decisions which discriminated against States parties.

36. Thirdly, the Committee against Torture, as a treaty body, recognized the Federal Republic of Yugoslavia (Serbia and Montenegro) as a party to the Convention and had requested a periodic report on the implementation of the Convention from that State. The participation of the Federal Republic of Yugoslavia (Serbia and Montenegro) in the current Meeting did not predetermine, and was not directly related to, the question of the nature of succession of States and therefore its participation was not at odds with the position of the European Union and other States. To adopt the motion proposed by the representative of Morocco would be to violate the fundamental principles of international legal instruments, and in particular the provisions relating to human rights, and would contradict the spirit which had guided the authors of the Convention.

37. Lastly, adoption of the motion would run counter to recent political developments, in particular the Dayton agreement, and specifically that part of the agreement that provided for all parties to fulfil their human rights obligations. Adoption of the Moroccan proposal might send out the wrong signal and be taken as meaning that the Meeting did not recognize the fact that the Federal Republic of Yugoslavia (Serbia and Montenegro) was bound by obligations under all the conventions to which it was a party. For the reasons stated, his delegation would vote against the motion proposed by the representative of Morocco.

38. Mr. VALENZUELA MARZO (Spain), speaking on behalf of the European Union in explanation of vote before the vote, said that the European Union wished to reiterate the position it had adopted in March 1994 in New York, when it had voted on the status of the Federal Republic of Yugoslavia (Serbia and Montenegro) with respect to the international obligations of the former Socialist Federal Republic of Yugoslavia. The European Union believed that the Federal Republic of Yugoslavia (Serbia and Montenegro) should comply with its obligations under the Convention and welcomed statements made by the representative of that State that it considered itself to be bound by the Convention against Torture.

39. Mr. BEBLER (Slovenia), speaking in explanation of vote before the vote, said that his delegation supported the legal arguments presented by the representatives of the United States, and Spain on behalf of the European Union. The Federal Republic of Yugoslavia (Serbia and Montenegro) was not a State party to the Convention; a unilateral declaration of its succession by its Parliament did not suffice for that purpose. In addition, the Federal Republic of Yugoslavia (Serbia and Montenegro) had failed to notify the depositary of its accession to the Convention. It had been a mistake by the depositary to invite the representative of the Federal Republic of Yugoslavia (Serbia and Montenegro) to attend the Meeting.

40. He wished to take issue with the statement made by the representative of the Russian Federation. The question at hand was related to the question of succession and the representatives of the Federal Republic of Yugoslavia (Serbia and Montenegro) were trying to effect recognition of the Federal Republic of Yugoslavia (Serbia and Montenegro) as the sole successor to the former Socialist Federal Republic of Yugoslavia. Since the Federal Republic of Yugoslavia was not a State party to the Convention, it could not actively participate in the Meeting and certainly could not vote.

41. Strict compliance by the Federal Republic of Yugoslavia (Serbia and Montenegro) with the provisions of the Convention against Torture which that State had unilaterally endorsed by decision of its Parliament was in the interests of the international community, given the well-documented reports of grave violations of human rights and violence in those parts of Bosnia and Herzegovina and Croatia under the control of Serbian forces and the numerous reports of police brutality in Kosovo.

42. The TEMPORARY CHAIRMAN reminded the representative of Slovenia that the process of voting, and with it the explanations of vote, had begun. He should therefore refrain from speaking on any questions that were not strictly related to the explanation of vote.

43. Mr. BEBLER (Slovenia) concluded by saying that the presence of the representatives of the Federal Republic of Yugoslavia (Serbia and Montenegro) in some form would be in the interests of the international community, but that form should not be as a State party to the Convention.

44. Mr. NGOUBEYOU (Cameroon) reiterated his request for a secret ballot.

45. The TEMPORARY CHAIRMAN said that there had already been three explanations of vote given orally and publicly, confirming that the States parties had decided to hold an open roll-call vote.

46. He invited the Meeting to vote on the motion proposed by the representative of Morocco that the Federal Republic of Yugoslavia (Serbia and Montenegro) should not participate in the work of the Meeting of the States Parties to the Convention.

47. Costa Rica, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Afghanistan, Albania, Algeria, Argentina, Australia, Austria, Bosnia and Herzegovina, Bulgaria, Canada, Chile, Costa Rica, Croatia, Czech Republic, Denmark, Egypt, Ethiopia, Finland, France, Germany, Greece, Hungary, Italy, Jordan, Latvia, Luxembourg, Malta, Mauritius, Monaco, Morocco, Netherlands, New Zealand, Norway, Philippines, Poland, Portugal, Romania, Senegal, Slovakia, Slovenia, Spain, Sweden, Tunisia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Yemen.

Against: Russian Federation, Federal Republic of Yugoslavia (Serbia and Montenegro).

Abstaining: Armenia, Brazil, Burundi, Colombia, Ecuador, Guatemala, Israel, Libyan Arab Jamahirya, Liechtenstein, Mexico, Nepal, Panama, Paraguay, Peru, Republic of Korea, Sri Lanka, Switzerland, Uruguay, Venezuela.

48. The motion proposed by Morocco was adopted by 47 votes to 2, with 19 abstentions.

49. The delegation of the Federal Republic of Yugoslavia (Serbia and Montenegro) withdrew.

50. Mr. NGOUBEYOU (Cameroon) and Mr. JING (China) said that they had not participated in the vote.

ELECTION OF THE CHAIRMAN (item 2 of the provisional agenda)

51. Mr. LACOUL (Nepal) nominated Mr. Seung Ho (Republic of Korea) for the office of Chairman.

52. Mr. Seung Ho (Republic of Korea) was elected Chairman by acclamation and took the Chair.

ADOPTION OF THE AGENDA (item 3 of the provisional agenda) (CAT/SP/17)

53. The CHAIRMAN said that, if there was no objection, he would take it that the Meeting of the States Parties wished to adopt the provisional agenda (CAT/SP/17).

54. It was so decided.

55. The CHAIRMAN said that in accordance with rules 2 and 3 of the rules of procedure of the Meeting of the States Parties adopted by the States parties at their First Meeting on 26 November 1987 (CAT/SP/2/Rev.1), the Secretary-General, in his note of 26 October 1995, had invited the States parties to be represented at the Fifth Meeting and to forward to him, if

possible, not later than one week before the date of the Meeting, the credentials of their representatives. The Secretary-General had yet to receive proper credentials from some of the States parties represented at the Meeting. He urged them to ensure that their credentials were submitted to the Secretary-General as soon as possible.

ELECTION OF OTHER OFFICERS OF THE MEETING (agenda item 4)

56. The CHAIRMAN said that under rule 4 of the rules of procedure (CAT/SP/2/Rev.1) the Meeting was required to elect one to four vice-chairmen from among the representatives of the States parties. At the Fourth Meeting, the States parties had decided to elect only two vice-chairmen.

57. Mr. DEGNO (Costa Rica) nominated Mr. Diaz Duque (Guatemala) for the office of Vice-Chairman.

58. The CHAIRMAN said that as there were no other nominations, he took it that the Meeting did not wish to elect more than one vice-chairman.

59. It was so decided.

60. Mr. Diaz Duque (Guatemala) was elected Vice-Chairman by acclamation.

The meeting rose at 1.05 p.m.